IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE

CRIMINAL APPLICATION NO. 3843 OF 2005
IN
CRIMINAL APPEAL NO. OF

The State of Maharashtra .. Applicant

Vs.

1. Raju Baburao Kanvade
and anr. .. Respondents

Mr. K.V. Saste, APP for applicant-State.

CORAM : B. H. MARLAPALLE &
SMT. R.S. DALVI,JJ.

Date : January 25, 2006.

P.C.:

1. Heard the learned APP. The respondents-accused have been acquitted from the offences punishable under Section 307 and 323 read with Section 34 of IPC by the III Ad-hoc Assistant Sessions Judge, Kolhapur in Sessions Case No.171 of 2003 and the said order of acquittal dated 30/11/2004 is sought to be challenged by way of an appeal by seeking leave to appeal under Section 378 (3) of Cr.P.C.

2. The trial court considered the evidence of Dr.Uttamkumar Sardesai (P.W.3) along with the medical certificates issued at Exh.27 and Exh.30 in respect of

Mahamad Patel and Shafik Shaikh respectively. The Medical Officer has stated that the injury no.2 sustained by Mahamad Patel was grievous in nature whereas injury no.1 was simple in nature. Injury No.2 could be caused by sharp side of the muddemal property i.e. the sword and injury no.1 could be possible with the blunt side of the same muddemal property. Shafik Shaikh had received simple injuries. Injury no.2 sustained by Mahamad Patel was incised wound fracture of lower 1/3rd of ulna bone 8 c.m. x 6 c.m. deep.

3. While considering the involvement of the accused persons in causing the said injuries, the trial court sifted the evidence of Jabbar Sattar Patel (P.W.1), Mahamad Sattar Patel (P.W.4) and noted that the P.W.1 contradicted his own depositions and further there was contradictions between the testimony of P.W.1 on one hand and P.W.4 on the other hand regarding the inflicting of blow by the sword. The trial court also considered the evidence of the I.O., namely, Shri Pandharinath Mandare, Police Inspector. The testimony of other witnesses like P.W.5 Shafik Shaikh and P.W.6 Ramchandra Jadhav could not also prove the involvement of the accused beyond reasonable doubt in the alleged attack/assault on the injured witnesses.

4. We are, therefore, satisfied that the reasoning set out by the learned trial Judge in support of his order of acquittal does not call for reconsideration by this court in an appeal and, therefore, this is not a fit case to grant leave to appeal under Section 378 (3) of Cr.P.C. Hence, leave is refused.

(Smt.R.S. Dalvi,J.) **(B.H. Marlapalle, J.)**